

EXHIBIT 10

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

HEADWATER RESEARCH,
LLC,

Plaintiff,

VS.

SAMSUNG ELECTRONIC
CO., LTD, et al.,

Defendants.

Case No.
2:23-cv-00103-JRG-
RSP

VIDEO RECORDED DEPOSITION UNDER ORAL EXAMINATION OF
BERNIE MURPHY

DATE: August 13, 2024

REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 Q And this is the July 19th, 2024
2 subpoena response from ItsOn ABC LLC.

3 And let me know when you have it
4 up, Mr. Murphy.

5 A That document is dated July 19th,
6 you said?

7 Q Correct.

8 A Yes, I do have this up.

9 Q Okay. And those are ItsOn ABC's
10 Objections and Responses to Samsung's
11 subpoena.

12 Is that right?

13 A Yes.

14 Q You're appearing today as a
15 representative of ItsOn ABC. Correct?

16 A Yes.

17 Q What is ItsOn ABC LLC?

18 A It's an assignment for benefits of
19 creditors entity, special purposes entity set
20 up by Sherwood Partners.

21 Q And why did Sherwood Partners set
22 up this entity?

23 MS. YOUNG: Objection. Misstates
24 the evidence. Lacks foundation.

25 A It's an entity that's set up to

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1 undertake the assignment for benefit of
2 creditors for a specific entity, specifically
3 here, ItsOn.

4 Q That's ItsOn Inc.

5 Is that right?

6 A Correct.

7 Q And can you explain, just at a high
8 level, what an assignment for benefit of
9 creditors is?

10 A Sure.

11 It is a state insolvency proceeding
12 for a company.

13 Q Are you an employee of ItsOn ABC
14 LLC?

15 A No, I'm not.

16 Q Were you ever an employee of ItsOn
17 ABC LLC?

18 A No.

19 Q Did ItsOn ABC LLC have employees?

20 A It may have had temporary employees
21 at the initiation of the process.

22 Q Does it have any employees today?

23 A No.

24 Q Do you know who the temporary
25 employees were of ItsOn ABC?

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1 A I don't recall.

2 Q Over the course of the day, I will

3 refer to ItsOn ABC as a short name today,

4 I'll refer to ItsOn ABC LLC as ItsOn ABC.

5 Does that make sense to you?

6 A Sure.

7 Q Okay. And then I will try to be

8 consistent in referring to the separate

9 company ItsOn Inc. as ItsOn Inc. All right?

10 A Sure.

11 Q And did you ever have any role in

12 connection to ItsOn ABC?

13 A Yes.

14 Q What was your role?

15 A Managing that project.

16 Q What was the project?

17 A The statutory insolvency process

18 for ItsOn Inc.

19 Q Can you generally describe for me

20 the work you did in that capacity?

21 A Sure.

22 So the assignee was appointed by

23 the company to wind down the company, that

24 being ItsOn Inc., to sell its assets, to

25 distribute the proceeds to the creditors and

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1 to wind down the company.

2 Q What was the goal of obtaining the
3 proceeds for the sale of the assets; what
4 were you going to do with those proceeds?

5 A To provide a distribution to the
6 creditors of the company. The company being
7 ItsOn Inc.

8 Q Thank you.

9 Does ItsOn ABC exist any longer?

10 MS. YOUNG: Can you read that back,
11 please.

12 (Whereupon the record was read back
13 by the reporter.)

14 A I don't know if it does or not.

15 Q Separate and apart from responding
16 to this subpoena, is ItsOn ABC doing work
17 consistent with its initial formation
18 purpose?

19 A Not actively today.

20 Q When did it stop doing active work
21 in that regard?

22 A A number of years ago.

23 Q Before 2020?

24 A I would say substantially most of
25 the work was completed prior to 2020.

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1 informal, concerning computer software or
2 networking technology?

3 A I do not.

4 Q Did you attend graduate school?

5 A I did not.

6 Q Now, how long have you been at
7 Sherwood Partners?

8 A Going on 23 years.

9 Q So is it fair to say that ItsOn ABC
10 is one of several projects you've worked on
11 of its type over the years?

12 A Yes.

13 Q And would you help me -- give me --
14 would you provide me your best description of
15 the relationship between Sherwood Partners
16 and ItsOn ABC?

17 A ItsOn ABC is a special purpose
18 entity that was set up by Sherwood Partners
19 to be the assignee for the benefit of the
20 creditors of ItsOn Inc. It is the entity
21 that kind of manages the processing.

22 Q All right. And do you know when
23 ItsOn ABC was formed?

24 A I believe it was sometime just
25 prior to the commencement of the ABC itself.

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1 A Yeah, I don't recall.

2 Q Okay. And so you don't recall
3 whether any Headwater entity was involved
4 with or communicated with ItsOn ABC.

5 Is that right?

6 A No, I do recall an entity by the
7 name of Headwater. Those specific names, I
8 don't recall.

9 Q Okay.

10 A But there was a -- there was an
11 entity of Headwaters that did communicate
12 with ItsOn ABC.

13 Q Okay. Can you -- can you describe
14 for me generally what the communications were
15 from Headwater, as you recall that name, with
16 ItsOn ABC?

17 A In general, my understanding was
18 they had some type of license with ItsOn Inc.
19 and they were a licensor and ItsOn Inc. was a
20 licensee.

21 And as part of our sales process,
22 we did have communications with
23 representatives of Headwater.

24 Q Do you recall which representatives
25 you had communications with?

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1 A I don't recall. It wasn't
2 primarily me. It was my colleagues that did
3 it.

4 Q Mr. Mcomber, for example?

5 A Yes, Nate Mcomber.

6 Q Okay. Do you recall being part of
7 any of those communications with Headwater?

8 A I'm sure I may have been copied on
9 them but I don't recall them specifically.

10 Q Can you tell me any more about your
11 recollection of this issue of a license as
12 you described it from Headwater to ItsOn
13 Inc.?

14 A Yeah. I don't have a whole lot of
15 insight on it, other than my understanding at
16 the time was they were a licensor and ItsOn
17 Inc. was a licensee.

18 And we were looking to monetize the
19 assets of ItsOn Inc. and typically we would
20 be working with licensors if we're going to
21 be transferring licenses to a buyer of the
22 assets. That's normal course.

23 Q And was it your understanding that
24 at the time of the formation of ItsOn ABC
25 that ItsOn Inc. still had a license from

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1 Q Good afternoon, Mr. Murphy.

2 Do you understand that you're still
3 under oath?

4 A Yes, I do.

5 Q And earlier today you explained the
6 purpose of the formation of ItsOn ABC, which
7 included selling the assets of ItsOn Inc. for
8 the benefit of ItsOn Inc.'s creditors.
9 Correct?

10 A Yes, that's correct.

11 Q Given that objective, fair to say
12 that one of the activities undertaken by
13 ItsOn ABC was to gather up and receive the
14 assets of ItsOn Inc. so that it could begin
15 the process of attempting to sell them?
16 Right?

17 A That's correct.

18 Q Other than the individuals that we
19 talked about earlier today, Mr. Mcomber,
20 Mr. Maidy and Mr. Hernandez, do you recall
21 any other individuals that were involved in
22 the acquisition of the assets of ItsOn Inc.?

23 A I don't recall.

24 Q Were you involved in that
25 acquisition as well?

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1 A I was managing that but not
2 carrying out the day-to-day activities of it,
3 no.

4 Q And with respect to that part of
5 the project, can you give me a little bit
6 more description of what it means to have
7 managed that?

8 A I would be managing the Assignee
9 team. In this case, Nate Mcomber and
10 Nicholas Hernandez.

11 Q All right. So what did that
12 entail, like checking in with them about how
13 it was going, having them report to you,
14 just, you know --

15 A That's exactly right.

16 Q Okay. And do you recall who from
17 ItsOn Inc. was involved in providing the
18 assets of ItsOn Inc.?

19 A I don't recall.

20 Q Do you know one way or the other
21 whether Sherwood Partners' representatives
22 visited the ItsOn offices to retrieve ItsOn's
23 physical servers and other assets?

24 A I don't recall.

25 Q Was there anybody at ItsOn ABC who

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1 would know that?

2 A No.

3 Q All right. You don't -- do you
4 have any reason to doubt that representatives
5 of ItsOn ABC visited the offices of ItsOn
6 Inc. to obtain the assets of ItsOn Inc.?

7 MS. YOUNG: Objection, calls for
8 speculation.

9 A I don't have any reason to doubt
10 that we did.

11 Q I mean, is that generally a
12 customary activity that would take place into
13 these circumstances?

14 A Yes, it is.

15 Q All right. It would have been
16 customary, as part of that gathering up the
17 assets, to gather all of the assets that
18 ItsOn Inc. possessed?

19 A Yes, it would. If they're not sold
20 on site, then yes, it would be customary to
21 gather up all of the assets.

22 Q And can you give me your
23 description based on your 23 years of doing
24 this kind of work, what would have been the
25 assets that would have been gathered up?

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1 A They would generally fall into two
2 categories.

3 One is the office equipment,
4 networking gear, types of assets, the hard
5 assets for the company, I will refer to them
6 as.

7 And the other would be the
8 intellectual property assets of the company.
9 And that would be defined as patents, files,
10 source codes, designs, specs and all of those
11 intellectual property types of assets.

12 Q Okay. And in the instance with
13 ItsOn Inc., do you have any reason to doubt
14 that you would have gathered up actual
15 hardware, like servers or hard drives, that
16 contain that intellectual property?

17 A I don't know if we -- if it would
18 be customary but I don't know if we did in
19 this particular situation.

20 Q Would it also be customary to
21 request access to any intellectual property
22 kept in the cloud and to pull that down for
23 ItsOn ABC?

24 A Yes, that would be customary to do
25 so, either to pull it down or to sell it and

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1 ABC acquired from ItsOn Inc. back when it did
2 that acquisition work in 2018?

3 A In part, yes.

4 Q Why do you say, "in part"?

5 A Because there was probably some
6 assets that we did monetize as part of our
7 process, such as equipment assets, office
8 equipment and any other miscellaneous assets.

9 Q Things like furniture, for example?

10 A Exactly right.

11 Q Do you have a recollection of being
12 able to monetize any of the intellectual
13 property assets?

14 A No, we did not.

15 Q So with respect to the intellectual
16 property assets that ItsOn ABC acquired from
17 ItsOn Inc., is it your understanding that, to
18 this day, ItsOn ABC possesses those exact
19 same materials that it originally acquired
20 back in 2018?

21 A We still have the folders that were
22 the assets of the transfer of the assets.

23 Q Is there any particular document
24 that comes to mind that was ItsOn IP
25 documentation that ItsOn ABC acquired in 2018

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1 but it knows it no longer has today?

2 A Not that I'm aware of.

3 Q So as far as you're aware, every

4 document corresponding to what you described

5 as ItsOn Inc. IP that was acquired in 2018 is

6 still in the possession of ItsOn ABC.

7 Is that right?

8 A As far as I'm aware.

9 Q Okay. And as far as you're aware,
10 were all of those materials produced in
11 response to Samsung's subpoena in this
12 action?

13 A I think they were made available as
14 part of the subpoena.

15 Q Well, let's break that apart.
16 So in this — in response to the
17 subpoena, ItsOn ABC produced around 1200
18 pages of documents.

19 Is that roughly squaring with your
20 understanding?

21 A I don't know.

22 Q Okay.

23 All right. Well, I will represent
24 to you that your counsel produced to us
25 around 1200 pages of documents.

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1 So do you understand that those
2 documents constitute some of the ItsOn Inc.
3 intellectual property that ItsOn ABC acquired
4 back in 2018?

5 A I don't know.

6 Q What ItsOn intellectual property do
7 you feel ItsOn ABC, as you described, made
8 available to Samsung in response to the
9 subpoena?

10 A All of the documents that we had in
11 a soft copy, and we provided, I will say the
12 ability to access certain folders that are
13 sitting on our servers that are labeled
14 intellectual property and other similar
15 folders that I believe, I assume, have
16 contents but I don't know that for sure.

17 Q So these folders that you offered
18 to give access to, why did you not just
19 produce those as documents in response to the
20 subpoena?

21 A Because in order to gain access to
22 those folders or files, you need a password.

23 Q Okay. And so did ItsOn ABC attempt
24 to gain access with a password but it was
25 unsuccessful?

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1 A Our outside IT manager did so.

2 Q So your outside IT manager

3 attempted to get access to those files, but

4 was unsuccessful.

5 Is that right?

6 A Correct.

7 Q Okay. And that outside IT manager,

8 that person did have something that appeared

9 to be the passwords and it just didn't work

10 or he didn't have any passwords at all; what

11 kind of situation did we have here?

12 A I think he thought he had the

13 passwords on a fob that we had in our

14 possession, and those passwords, according to

15 them, did not work.

16 Q All right. So just to tie things

17 up here, all of the ItsOn IP that ItsOn ABC

18 possessed was either produced in response to

19 the subpoena, in part of the around 1200

20 pages that was produced to us, or it is

21 resident on a number of electronic files that

22 ItsOn ABC possesses but which you are unable

23 to gain access to because of password

24 constraints.

25 Is that right?

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1 A I believe that's correct.

2 Q Okay. Is your IT person a skilled
3 IT person?

4 A I think so.

5 Q Okay. Have you used him for a
6 while for those kinds -- for challenging IT
7 work?

8 A He's been -- he's been retained by
9 Sherwood for many years.

10 Q All right. So he's -- it sounds
11 like he's a pretty competent guy that you
12 guys have faith in and if someone could
13 reasonably obtain access to those documents,
14 he would have been able to do it?

15 A In my opinion, yes.

16 Q Do you recall whether ItsOn ABC
17 ever tried to gain access to those documents
18 that you're describing that currently today
19 you're unable to gain access to?

20 A I don't know.

21 Q When ItsOn ABC acquired the assets
22 of ItsOn Inc., where did it take those
23 assets?

24 A I don't know for sure, but normal
25 course would be bring those back to the

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1 Q All right. If you turn to page
2 ending in Bates 1065 and 1066, I just want to
3 focus on the e-mails on those two pages of
4 this Exhibit 5.

5 A 1065?

6 Q Right.

7 A (Witness reviewing.)

8 I'm ready to go.

9 Q All right. Great.

10 So there's a dialogue between
11 Mr. Lavine and Mr. Mcomber that ultimately
12 ends with Mr. Lavine writing, at 12:56 p.m.,
13 writing to Kathy as well as to Mr. Mcomber
14 and Mr. Hernandez, where Mr. Lavine explains
15 what ItsOn Inc. documents were kept on this
16 Aha! repository.

17 Do you see that?

18 A I do.

19 Q And Mr. Lavine writes, This is
20 where all of the product roadmaps and
21 requirements were done.

22 Do you see that?

23 A Yes, I do.

24 Q Okay. And so do you know what
25 became of this Aha! account that had all of

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1 ItsOn Inc.'s product roadmap and

2 requirements?

3 A No, I do not.

4 Q And you don't know, one way or the
5 other, whether ItsOn ABC took possession of
6 the materials in that ItsOn Inc. Aha!
7 account. Correct?

8 A Correct, I do not know.

9 Q And I will represent to you that we
10 did not receive any materials in response to
11 our subpoena as part of the production.

12 And you don't separately have any
13 awareness of any particular materials that
14 you withheld for production of that type.

15 Is that correct?

16 A That is correct.

17 Q Okay. You don't know whether ItsOn
18 ABC ultimately gained access to this ItsOn
19 Inc. Aha! account?

20 A No, I do not.

21 Q All right. Now let's talk about a
22 different subject.

23 The subject being documents that
24 comprise ItsOn Inc. e-mails amongst company
25 employees at a company, like ItsOn Inc., that

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1 existed for roughly a decade from 2008 to
2 2018.

3 Do you understand that general
4 subject matter?

5 A Yes, I do.

6 Q Okay. Do you know, one way or the
7 other, whether ItsOn ABC took possession of
8 ItsOn Inc.'s company e-mail?

9 A I do not know.

10 Q In what you described as the
11 customary process of taking possession of all
12 of the assets of a company like ItsOn Inc.,
13 would there be any reason to have worked to
14 separately exclude the collection of company
15 e-mails as part of the collection of ItsOn
16 Inc. assets?

17 A Can you repeat that question?

18 Q Sure. I apologize. It is a little
19 bit muddy.

20 I'm just trying to understand, if
21 ItsOn Inc. e-mail was on a particular server
22 and ItsOn ABC went to ItsOn's premise and
23 collected up the servers, ItsOn ABC would not
24 have taken special efforts to not take the
25 ItsOn Inc. company e-mail, would it?

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1 A I don't know if we went through
2 special efforts not to take it but what I
3 would normally say is, we don't download and
4 retain company e-mails and store those
5 e-mails in perpetuity. As a matter of
6 business course, we don't do that.

7 Q Sure.

8 So what about e-mails that would
9 have been resident on a software platform
10 like G Suite?

11 A Again, when we download
12 intellectual property assets, e-mails are
13 generally not part of the intellectual
14 property assets.

15 We generally are not selling
16 e-mails of the company or an e-mail server of
17 a company.

18 Q Okay. All right. So --

19 A We don't -- we don't retain e-mails
20 for an assignor's e-mail server as a matter
21 of course.

22 Q Okay. Got it.

23 And so you, at ItsOn ABC, certainly
24 wouldn't, it sounds like, have made the
25 representation to ItsOn Inc. that the e-mail

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1 of ItsOn Inc. would be preserved in your
2 possession. Right?

3 A That would not be normal course.

4 Q Got it.

5 And when ItsOn ABC took possession
6 of servers, does it then or did it then
7 actually download the contents of those
8 servers into its -- into its own
9 repositories?

10 A That is often the case, yes.

11 Q Can you walk me through that
12 process, so I understand it in a little bit
13 more detail?

14 A I'm not -- I'm not the one that
15 normally does that here at Sherwood but if we
16 get servers from a company and those servers
17 contain either corporate records on them or
18 they contain intellectual property assets on
19 them, but that is usually downloaded in some
20 format and that is retained at the Assignee.

21 Q Got it.

22 And then what is done with the
23 servers, the hardware that you collected from
24 which you conducted the download?

25 A They're often sold off.

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1 Q Okay. And does ItsOn ABC still
2 possess any physical servers that were
3 collected from ItsOn Inc.?

4 A My understanding is no.

5 Q All right. So just to finish off
6 the subject of e-mail collections, you don't
7 know -- ItsOn ABC doesn't know, one way or
8 the other, where the e-mail of ItsOn Inc. is
9 or if it exists anywhere at this time.
10 Right?

11 A That is correct.

12 Q And is it possible that -- well,
13 strike that.

14 Would ItsOn ABC have accommodated
15 an instruction from ItsOn Inc. to preserve
16 ItsOn Inc. company e-mail, if such a request
17 had been made?

18 A I don't know.

19 Q Is that a customary thing to have
20 transpired, in your experience?

21 A No, it's not.

22 Q And do you have any reason to
23 believe that there was some specific
24 instruction by ItsOn Inc. to please preserve
25 the e-mail of ItsOn Inc. in the hands of

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1 of the subpoena.

2 Q Part of the response to the
3 subpoena?

4 A That is correct.

5 Q All right. So was everything that
6 you produced in response to Samsung's
7 subpoena a digitized version or did you
8 actually go and, you know, scan some hard
9 copy documents that you still had lying
10 around in the ItsOn Inc. designated area?

11 A My understanding is everything was
12 already digitized.

13 Q Okay. And then what was done with
14 the physical documents of ItsOn Inc. after
15 they were digitized?

16 A They're generally destroyed.

17 Q Okay. Do you know if ItsOn ABC
18 received any documents from ItsOn Inc. that
19 were connected to the cloud storage service
20 known as Box?

21 A I don't know.

22 Q Is there anyone else at ItsOn ABC
23 who would know that other than you?

24 A No, there's not.

25 Q Anyone else at Sherwood Partners

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1 who would know that, other than you?

2 A No.

3 Q Same question with respect to ItsOn
4 Inc.'s G Suite Enterprise account, do you
5 know whether ItsOn ABC took possession of
6 such materials?

7 A I don't know.

8 Q And no one else at either ItsOn ABC
9 or Sherwood Partners would know the answer to
10 that.

11 Is that right?

12 A I believe that's correct, yes.

13 Q If you look at Exhibit 5, the Bates
14 number page ending in 1064 -- let me know
15 when you're there.

16 A I am there.

17 Q All right. Do you see that it's an
18 e-mail from Jim Lavine to Nate Mcomber, the
19 subject is ItsOn G Suite Enterprise account?

20 A Yes, I do.

21 Q And Mr. Lavine writes that he
22 suggests that with respect to the G Suite
23 Enterprise account, that we don't let it
24 lapse as that is where all the docs are.

25 Do you see that?

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1 A Yes, I do.

2 Q Okay. And you don't know, one way
3 or the other, whether that account was
4 allowed to lapse.

5 Is that right?

6 A That is correct. I don't know.

7 Q And you don't know, one way or the
8 other, whether ItsOn ABC took possession of
9 the docs that Mr. Lavine describes were kept
10 within the G Suite Enterprise account.

11 Is that right?

12 A That's correct, I don't know.

13 Q But certainly fair to say that in
14 the production of documents in response to
15 the Samsung subpoena, those 1200 pages don't
16 appear to contain the docs that would have
17 been maintained as Mr. Lavine describes in
18 the G Suite Enterprise account?

19 MS. YOUNG: Objection, calls for
20 speculation.

21 A Yeah, I don't know.

22 Q Are you aware of anyone else,
23 outside of ItsOn ABC, being given access to
24 ItsOn Inc.'s documents during the asset
25 transfer process?

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1 A I'm not aware of anybody else.

2 Q Are you aware of whether ItsOn ABC
3 received any technical documents from ItsOn
4 Inc. other than source code?

5 A I don't know.

6 Q It would have been customary to
7 collect all of that, though. Correct?

8 A That is correct.

9 Q Now, if you'll turn to the page
10 ending in 1075 of Exhibit 5 to your
11 deposition and let me know when you're there.

12 On that page there's an e-mail from
13 Mr. Lavine to Mr. Mcomber. And in that
14 e-mail is -- I'll summarize, appears that
15 Mr. Lavine is describing documents that ItsOn
16 Inc. possessed and that could be gathered up
17 as part of the work for ItsOn ABC.

18 Do you agree with that?

19 A Yes.

20 Q Okay.

21 A I do see that.

22 Q Right.

23 Do you know whether any of the
24 documents described in this e-mail were, in
25 fact, gathered up and their possession taken

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1 transitioning the assets to ItsOn ABC LLC?

2 A He does appear to have been
3 involved from the exhibits that you've
4 presented here today.

5 Q Okay. And my understanding from
6 your counsel is that the passwords that
7 Mr. Lavine provided, ItsOn ABC has them, has
8 attempted to apply them to gain access to the
9 files that are not opening, but they do
10 not -- they do not work in gaining such
11 access.

12 Is that right?

13 A Yeah. I don't know if they were
14 provided by Jim Lavine but the passwords that
15 we apparently have do not work.

16 Q Uh-huh. Okay.

17 A That is correct.

18 Q All right.

19 MR. KODISH: We're going to switch
20 gears and make a new exhibit.

21 This is Exhibit 9.

22 (Whereupon the above mentioned was
23 marked for Identification.)

24 Q And it is a document produced by
25 ItsOn ABC, bearing Bates numbers 299 through

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1 deposition?

2 A I believe we would have, as part of
3 the subpoena request.

4 Q Thank you.

5 During the course of ItsOn ABC's
6 attempts to sell the ItsOn Inc. assets, did
7 the patents owned by a company called
8 Headwater come up in any respect that you
9 recall?

10 MS. YOUNG: Objection as to form.

11 A Yes, it did.

12 Q Can you explain what you recall?

13 A My recollection, that we had some
14 discussions with Headwater during the sales
15 process, in trying to get -- I believe it was
16 trying to get their consent as a licensor so
17 we could sell the assets to other third
18 parties.

19 Q Do you recall who the discussions
20 were with at Headwater?

21 A I do not. I don't think I was
22 involved with those. I believe -- I know
23 that Nate Mcomber was involved in those
24 discussions.

25 Q Okay. And do you remember how

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1 those discussions, yeah, ultimately came out?

2 Like what was the result of those
3 attempts to be -- persuade Headwater to do
4 what you were asking?

5 A I think the -- the ultimate
6 conclusion we came to is we were not able to
7 get a transaction done with any buyers
8 throughout that sales process.

9 Q Now, do you recall any particular
10 buyer from that at least 90 that you were in
11 touch with, ever making a significant
12 monetary offer for the assets of ItsOn at any
13 time?

14 A As I think I've previously
15 mentioned as part of the testimony, there
16 were a couple of buyers that indicated some
17 economics. I don't recall what they were.

18 My recollection, though, they were
19 not material enough to pay the secured
20 creditor off in full.

21 Q Do you recall how much the secured
22 creditor was needed to be paid off in full?

23 A It was multimillions, was my
24 recollection.

25 Q Was it less than ten million?

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1 is rather small.

2 Q You can go ahead and blow it up.

3 You should be able to click the plus.

4 A Okay. I do see it.

5 Q Okay. Great.

6 This document was produced from
7 ItsOn ABC's files, this two-page document.

8 Can you tell me what it shows?

9 A Sure.

10 It shows the income statement of
11 the company or the statement of operations,
12 it looks like, of ItsOn Inc. from 2017 for
13 the -- I'm assuming fiscal year for 2017 --

14 Q Okay.

15 A -- on a monthly basis and also a
16 quarterly basis.

17 Q And as far as net income on the
18 last row of the document, bearing Bates
19 number 49, fair to say that ItsOn Inc. was
20 22.6 million in the red at that time?

21 A Their net loss appears to be
22 22.6 million. That is correct.

23 Q And a similar set of numbers is
24 reflected on page 50 with the profit and loss
25 detail.

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1 A I mean, yes, they're on the e-mail,
2 so they're involved in this e-mail
3 communication.

4 Q This Exhibit 16, at the last
5 e-mail, at 11:19 a.m., reflects that the
6 parties were not able to move forward.

7 Do you see that?

8 A I'm sorry. Where is that, then?

9 Q The very first e-mail on the first
10 page, on document 858.

11 A (Witness reviewing.)

12 Yes, I do see that.

13 Q All right. Do you have any
14 recollection of what transpired with respect
15 to the negotiations with Mr. Naik and the
16 company that he represented concerning, yeah,
17 the possible purchase of ItsOn Inc. beyond
18 what is reflected in these e-mails?

19 A My general understanding was, we
20 were trying to get a transaction done with
21 one or more buyers, and Marben may have been
22 one of those buyers.

23 And because there was a
24 relationship between ItsOn Inc. and
25 Headwater, we needed, as I mentioned earlier

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1 in the testimony here, the deposition, that
2 we needed to get Headwater's consent as part
3 of the sale of ItsOn Inc.'s IP assets.

4 Q All right.

5 A And that consent was never -- was
6 never forthcoming.

7 Q Okay, fine.

8 So that consent was never
9 forthcoming. Not just in the context of
10 Marben but to the extent anyone else showed
11 interest, Headwater did not give consent in
12 that context either. Correct?

13 A Yeah. I don't know if those other
14 conversations progressed far enough along
15 where we would have brought in Headwater for
16 those discussions, but ultimately, we never
17 got consent in those transactions or the
18 transactions never proceeded forward.

19 Q All right. So it sounds like your
20 memory right now is to the extent any
21 potential transactions moved to a material
22 extent that maybe Marben was the one that
23 went the furthest.

24 Is that fair?

25 A There may have been others but I --

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1 (Brief recess taken.)

2 THE VIDEOGRAPHER: Stand by,
3 everyone. I will bring you in.

4 The time is 4:15 p.m. Pacific time.
5 We're back on the record.

6 Q Hi, Mr. Murphy.

7 MR. KODISH: I'm now going to
8 introduce perhaps one last exhibit,
9 Exhibit 20.

10 (Whereupon the above mentioned was
11 marked for Identification.)

12 Q That's a document bearing Bates
13 number Assignee 856 through 857.

14 A Okay. I have that up.

15 Q So this e-mail was sent from
16 Mr. Mcomber of ItsOn ABC, on February 14,
17 2020.

18 It's pretty short. Take a look at
19 it.

20 And if you can tell me what is
21 being described in this e-mail, I would
22 appreciate it.

23 A (Witness reviewing.)

24 Sure. This is, I'm assuming, a
25 result of an investor in ItsOn, has either

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1 requested what we call an equity writeoff
2 letter or the status of the ABC estate, and
3 Nate Mcomber is communicating back to them
4 that we have run our process and as a result
5 of that, there is not going to be a
6 distribution that's going to be made
7 available to the shareholders of ItsOn Inc.

8 As a result of that, we're issuing
9 that investor what we refer to internally as
10 an equity writeoff letter, which is the
11 second part of this exhibit.

12 Q Yeah.

13 What -- can you explain to us what
14 an equity writeoff letter is?

15 A It means that there is no monies
16 that are going to be available for a
17 distribution to the shareholders of ItsOn
18 Inc.

19 Q All right. Thank you for that
20 description.

21 So to make sure I understand, this
22 Exhibit 20 shows that as of February 14,
23 2020, ItsOn ABC's efforts for the last
24 roughly two years to attempt to sell the
25 assets of ItsOn Inc. have borne no material

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1 fruit and really have not led to any monies
2 coming in that could be distributed in any
3 significant amount to the creditors.

4 Is that right?

5 A Yes, I would agree with that.

6 Q Uh-huh.

7 And essentially, does this look
8 like ItsOn ABC is alerting a creditor and
9 really putting forth this possession that
10 it's the end of the line, there's no monies
11 coming from the attempts to sell ItsOn Inc.
12 assets?

13 A Certainly as of this date, and that
14 is the case.

15 Q And do you have any knowledge,
16 based on ItsOn ABC or for your work at
17 Sherwood, that there have been any attempts
18 since February of 2020 that have shown any
19 potential or reached any monies in
20 compensation or payment for the ItsOn Inc.
21 assets?

22 A No, there has not been.

23 Q Switching gears, are there any
24 documents that have not yet been produced
25 from ItsOn ABC or Sherwood Partners that --

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1 some odd companies. Correct?

2 A That wouldn't be the normal course.

3 Just to clarify, ItsOn Inc., when

4 they did their General Assignment of the ABC,

5 they were effectively out of business.

6 So there isn't really anyone at

7 ItsOn Inc. to really update, just to clarify

8 that.

9 Q Sure. Yeah, that -- that's --

10 A Typically, there's not a board of

11 directors. There's no management. ItsOn

12 Inc., for all intents and purposes, is no

13 longer operating.

14 Q Thank you for that.

15 And we saw e-mails earlier today

16 with James Harris, for example.

17 Do you recall that name?

18 A I do.

19 Q And it's -- I take it from your

20 testimony a moment ago that you don't have

21 any recollection of updating ItsOn Inc. or

22 Headwater or any of the former employees of

23 those two entities, including James Harris,

24 specifically about providing materials to

25 Samsung, do you?

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1 A It would not be the norm but I
2 don't know that, one way or the other.

3 Q And so whatever interest they --
4 that you received from them, that wouldn't be
5 interest for purchasing the Headwater
6 patents. Fair?

7 A Yes, that is -- that's fair to say.

8 Q That wouldn't be interest in
9 licensing the Headwater patents. Fair?

10 A Can you repeat that again?

11 Q Yeah.

12 That also wouldn't be interest in
13 licensing the Headwater patents because
14 that's not what you were discussing with
15 them. Fair?

16 MR. KODISH: Objection, form.

17 A I would say as a general comment
18 that's correct, but to the degree that a
19 buyer wants to acquire all of the
20 intellectual property assets of ItsOn Inc.,
21 and to the degree that Headwater has some
22 intellectual properties embedded into ItsOn
23 Inc.'s IP, then I would believe that a buyer
24 would need to license that IP that's owned by
25 Headwater.

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1 Said differently, we can't
2 arbitrarily transfer a license to a buyer if
3 that license is not transferable or
4 assignable.

5 Q Got it.

6 I think that kind of might
7 transition into another topic I wanted to
8 touch on.

9 MR. MIRZAI: If we can go to
10 Exhibit 18.

11 Q This is another document that you
12 discussed with Mr. Kodish today.

13 This begins in Bates number 861, I
14 think.

15 A Okay. I've got it up.

16 Q And I think you were discussing
17 page 9, along with other pages, with
18 Mr. Kodish.

19 Do you recall that?

20 If you go to page 9, it ends -- at
21 the bottom it has Bates label 869.

22 A Yes, I'm there.

23 Q And I believe this was referred to
24 as an offer by -- by this entity earlier
25 today.

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1 "file," you mean files?

2 Q Yes.

3 A Yes, I believe we have, through our
4 counsel.

5 MR. KODISH: Objection to form.

6 Q And as far as you're aware, Samsung
7 never visited or -- or inspected or asked to
8 come visit or inspect the files or folders.
9 Correct?

10 MR. KODISH: Objection, form.

11 A Not that I'm aware of.

12 Q You wouldn't have said no to that
13 request. Correct?

14 A No.

15 Q Based on your testimony today, ABC
16 has never destroyed a single document, as far
17 as you're aware, in the context of the scope
18 of this subpoena. Correct?

19 A No, not that I'm aware of.

20 Q And ItsOn Inc. has certainly never
21 requested ABC to destroy a single document.
22 Correct?

23 A Not that I'm aware of.

24 Q In 2018, that was the year that you
25 initially -- that ABC initially reached out